



# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone

(617)-796-1120

Telefax

(617) 796-1142

E-mail

mkruse@ci.newton.ma.us

David B. Cohen  
Mayor

DATE: January 4, 2006

TO: Ald. Brian Yates, Chairman, and  
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development  
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: **Supplemental information.**

Petition # 237-01 of ALD. MANSFIELD proposing to amend Sections 30-1, 30-11, 30-12, and 30-13 to clarify the definitions of and specify the distinctions between restaurants, retail food establishments, fast food processing and preparation as allowed and permissive uses in Business, Manufacturing, and Mixed Use districts.

CC: Board of Aldermen  
Mayor David B. Cohen  
Planning and Development Board  
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee  
Martina T. Jackson, Chair, Board of License Commissioners  
Alfred R. Guzzi, Jr., Administrative Director, Licensing Board  
David Naparstek, Commissioner of Health and Human Services

The purpose of this memorandum is to provide supplemental information for use by the Zoning and Planning Committee in its deliberations on this subject. As previously noted, further study of this issue may be needed.

## I. BACKGROUND

This petition was presented at a public hearing on February 15, 2005, and following a preliminary discussion, was scheduled for the Zoning and Planning Committee working session on March 28, 2005. As elapsed time since the initial public hearing has exceeded 90 days, the petition will need to be reheard.

## II. ADDITIONAL INFORMATION -- RETAIL FOOD-SERVING ESTABLISHMENTS

Petition #237-01 seeks to review and clarify selected definitions in the Zoning Ordinance pertaining to retail food-serving businesses. As previously discussed, the City has a set of definitions pertaining to restaurants, fast food establishments, and drive-in establishments, but no definition pertaining to "retail food service" or "retail food establishment." Nevertheless, these

establishments are permitted “as of right” as a retail sales use, and may at the present time also seek approval through the special permit process for accessory “drive-in” operations. In addition, research of other communities both nearby and elsewhere in the country suggests that while most ordinances contain provisions pertaining to “eating and drinking establishments,” “restaurants,” and “fast food,” few, if any, have definitions for retail food-serving establishments. Some terms, which may be useful during further deliberations, include the following:

- Sale of food to the public in a ready-to-consume state;
- Food prepared on-site in a ready-to-consume state;
- Formula fast food establishment – characterized by a recognizable trade name and common menu at multiple eating establishments serving fast to order food; and
- Take-out establishment – serving specialty food items (ice cream, pizza, donuts, deli sandwiches, etc.) with only a limited number of seats available

#### Newton Health and Human Services Department

The City’s Health and Human Services Department focusing on food safety and public health aspects utilizes the following definition of “Food Establishment”:

“Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.”

As further elaborated in Health and Human Services Department information, this includes restaurants, catered feeding locations, market, retail bakery, and vending locations, among various categories of food providers (see *Attachment A – Newton Health and Human Services Department Information – Food Establishments*).

#### The North American Industry Classification System

The North American Industry Classification System (NAICS) has replaced the U.S. Standard Industrial Classification (SIC) system. The U.S. Census Bureau began to implement NAICS in 2002. NAICS organizes and includes all food services and drinking places which prepare meals, snacks, and beverages to customer order for immediate on-premises and off-premises consumption. While NAICS divides food service establishments into many subcategories, several may be helpful in considering appropriate definitions pertaining to establishments in Newton.

The NAICS **Limited-Service Eating Places** category comprises establishments primarily engaged in providing food services where patrons generally order or select items and pay before eating. Most establishments in this group do not have wait staff service, but some provide limited service, such as cooking to order, bringing food to seated customers, or providing off-site delivery. This category in turn consists of a number of subcategories such as Limited-Service Restaurants. The following illustrates establishments in this sub category:

- Carry out restaurants
- Delicatessen restaurants
- Family restaurants, limited service
- Pizza delivery shops
- Pizza parlors, limited service
- Pizzerias, limited service
- Sandwich shops, limited service
- Steak houses, limited service
- Take out eating places

Another subcategory is Snack and Nonalcoholic Beverage Bars with establishments which retail specialty snacks or nonalcoholic beverages for consumption on or near the premises, such as:

- Bagel shops; on premises baking; carryout service
- Beverage bars (coffee, juice, soft drinks)
- Coffee shops; on premises brewing
- Confectionery snack shops; items made on premises; carryout service
- Cookie shops; on premises baking; carryout service
- Doughnut shops; on premises baking; carryout service
- Frozen custard stands, fixed location
- Ice cream parlors
- Muffin shops; on-premises baking; carryout service
- Pretzel shops; on premises baking; carryout service
- Snack bars (e.g. cookies, popcorn, pretzels), fixed location
- Soft drink beverage bars, fixed location

While NAICS does not address seating, it is likely that the Limited-Service Restaurant businesses accommodate seating for on-premises consumption, while the Snack and Nonalcoholic Beverage Bar establishments are oriented to off-premises consumption.

#### Typical Characteristics of Retail Food Serving Establishments.

The above information supplements the initial review of common characteristics articulated in the previous Planning Department memorandum as restated below:

1. Establishments where the principal service is "take-out" type food for off-premises consumption
  - Order is placed at counter or by phone
  - Floor plan is designed primarily for food preparation, packaging and retailing,
  - Food is pre-packaged cold for consumption off premises
  - Food is prepared warm and packaged for consumption off premises
  - No wait staff – customer does self service
  - Customer pays for food prior to eating
  - Customer receives food at counter and leaves premises
  - Minimal seating/counter available for incidental customer use
2. Establishments where the principal service is "take-out" type food along with "eat-in" accommodations
  - Order is placed at counter or by phone
  - Floor plan has area designated for food preparation and retailing
  - Floor plan also has significant area designated for on-premises seating
  - Food is packaged cold for on or off-premises consumption
  - Food is prepared warm for on or off-premises consumption
  - No wait staff – customer does self service
  - Customer pays for food prior to eating
  - Customer receives food at counter and may elect to leave or stay
  - Significant seating available for customer use (chairs, tables, couches, etc.)

An additional characteristic now reflected above is the payment procedure. "Take-out" establishments typically require payment prior to receipt of food and its consumption, whereas restaurants provide for payment after completion of a meal.

### III. NEWTONVILLE “SNAPSHOT” -- Newtonville retail food serving establishments

While a survey of the entire City is not practicable at this time, the Planning Department found it useful to obtain a “snapshot” of retail food serving establishments operating in one of our villages – in this case Newtonville. The Planning Department believes that this snapshot helps illustrate retail food service uses and patterns in Newton as to establishment characteristics and operations. *Attachment B – Newtonville Retail Food Serving Establishments* summarizes the results of this mini-survey. Of the 14 currently operating eating establishments, four are restaurants, two have characteristics of both restaurants and significant take-out service (Cabot’s and Taste in Newtonville), and eight provide primarily take-out service. None have external walk-up or drive-through service. All except one establishment are located in BU-1 zoned areas, while Cabot’s is located in the BU-2 zone. Seating ranged from 0 to 12 for the smaller take-out establishments such as Basil Tree, Great Harvest, and New Hong Kong, but also include Dunkin Donuts. Medium size take-out establishments such as Bagels Best, KFC/Taco Bell, and Starbucks have approximately 30 seats. Restaurants and restaurant-like establishments such as Cabot’s tended to have 80 or more seats, with three restaurants having over 100 seats. Only seven establishments, consisting primarily of restaurant type operations and medium size take out establishments indicated some on-site (i.e. off-street) parking, but also appear to utilize on-street parking. The remaining establishments relied primarily on street or public parking. Due to its limited nature, this mini-survey was not intended to address intensity of use at any one establishment. As a result, it remains for future studies to assess such impacts as may be generated by the number of “walk-to” or “drive-to” customers frequenting these and other retail food serving establishments. At this time the Planning Department is not aware of any anecdotal information suggesting pedestrian impacts (such as long cues snaking outside an eatery) or vehicular impacts (such as traffic congestion) have been caused by the surveyed establishments.

### IV. SUMMARY

Over the years, numerous types and kinds of “take-out” food establishments have continued to appear in Newton. These have been permitted largely “as of right” in various commercial zones as retail food-serving establishments, which to date have not been defined, yet are permitted “as of right” without further regulation under the Zoning Ordinance. As previously discussed, common characteristics of retail food-serving establishments suggests two groupings:

1. Establishments where the principal service is “take-out” type food for off-premises consumption.
2. Establishments where the principal service is “take-out” type food along with “eat-in” accommodations.

Limited “Take-out” service may be available at restaurants where such service is accessory to the restaurant and not the principal operation, such as Lam’s Restaurant and Karoun in Newtonville. NAICS information suggests that establishments marketing food primarily intended for off-premises consumption are likely to be “snack” and “beverage” type establishments.

Although no survey or study is currently available providing an overview of business patterns or assessment of related impacts of these businesses overall in Newton, Planning Department staff is prepared to continue researching this matter and working with the Zoning and Planning Committee and with the Law Department in developing a suitable definition for retail food-serving establishments for incorporation in Section 30-1, Definitions.

As part of this process it will be important to develop threshold criteria to distinguish between "take-out" establishments also providing for significant on-premises consumption and restaurants with ancillary "take-out" service, in order to provide a workable guideline for determining when such establishments change character to, or may in fact be a restaurant type use. Factors such as volume and sales of foods consumed both on and off premises merit review and consideration. In addition, it will be necessary to develop workable parking requirements applicable to retail food-serving establishment type uses.

#### ATTACHMENTS

*Attachment A – Newton Health and Human Services Department Information: Food Establishments.*

*Attachment B – Newtonville Retail Food Serving Establishments*

**Attachment A – Newton Health and Human Services**  
**Department Information:**  
**Food Establishments**

Food Establishment.

- (1) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:
  - (a) Such as a restaurant; satellite or catered feeding location when these locations are equipped with facilities to prepare, store or serve food; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; retail bakery; vending location; institution; food bank; residential kitchens in bed and breakfast homes and bed and breakfast establishments; residential kitchens for retail sale and,
  - (b) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers. <sup>(FC)</sup>
- (2) Food establishment includes:
  - (a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and <sup>(FC)</sup>
  - (b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.
- (3) Food establishment does not include:
  - (a) A produce stand that only offers whole, uncut fresh fruits and vegetables;
  - (b) A food processing plant;
  - (c) A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale;
  - (d) A kitchen in a private home that prepares food for distribution to a charitable facility in accordance with M.G.L c. 94, § 328;
  - (e) An area where food that is prepared as specified in 105 CMR 590.002: Food Establishment(3)(c) is sold or offered for human consumption;
  - (f) A kitchen in a private home, such as a family day-care provider; or a bed and breakfast home that serves only a continental breakfast; or,
  - (g) A private home that receives catered or home-delivered food. <sup>(FC)</sup>

**Table 1. Risk Categorization of Food Establishments**

RISK TYPE	RISK TYPE CATEGORY DESCRIPTION	FREQUENCY #/YR
1	Pre-packaged nonpotentially hazardous foods only. Limited preparation of nonpotentially hazardous foods only.	1
2	Limited menu (1 or 2 main items). Pre-packaged raw ingredients are cooked or prepared to order. Retail food operations exclude deli or seafood departments. Raw ingredients require minimal assembly. Most products are cooked/prepared and served immediately. Hot and cold holding of potentially hazardous foods is restricted to single meal service. Preparation processes requiring cooking, cooling, and reheating are limited to 1 or 2 potentially hazardous foods.	2
3	Extensive handling of raw ingredients. Preparation process includes the cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous food. Advance preparation for next day-service is limited to 2 or 3 items. Retail food operations include deli and seafood departments. Establishments doing food processing at retail.	3
4	Extensive handling of raw ingredients. Preparation processes include the cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous foods. Food processes include advanced preparation for next-day service. Category would also include those facilities whose primary service population is immunocompromised.	4
5	Extensive handling of raw ingredients. Food processing at the retail level, e.g., smoking and curing; reduced oxygen packaging for extended shelf-life.	4

## Attachment B: Newtonville Retail Food Serving Establishments

Establishment	Zone	Licensing Information			Survey: Establishment Characteristics				Survey: Operations Information									
		License Type	Liquor License	Licensed Seats	Observed Seats	Food/Beverage Service	On-site Parking	Other Parking	Counter Service*	Wait Staff	Pay 1st	Disp. Pack.	% take-out	Phone Orders	Deliv. Serv.	Wait Time	Rapid Turnover	Drive-Up <sup>a</sup>
<b>Ariadne</b> (617) 552-8551 541 Walnut Street	BU-1	Rest.	Yes	30	10 at counter, 10 other	Mediterranean, semi-formal dining with bar	several shared spaces	Metered	No	Yes	No	No	None	No	No	Medium	No	No
<b>Bagel's Best</b> 340 Walnut Street	BU-1	CV	No	30	26	Bagels, sandwiches, salads, coffee and cold drinks	several shared spaces	Metered	Yes	No	Yes	Yes	More than 50%	Yes	No	Short	Yes	No
<b>Bean Tree</b> (617) 244-5570 106 Washington Street	BU-1	CV	No	2	4	Prepared foods, breads, pastries, coffee and cold drinks (Catering & take-out)	2 spaces	Metered	Yes	No	Yes	Yes	All	Yes	No	Short	Yes	No
<b>Cabot's</b> (617) 965-0909 743 Washington Street	BU-2	CV	No	85	72 at tables, 15 at counter	Ice cream, sandwiches, soups, salads, breakfast	12 - 14 spaces	Metered	Yes**	Yes	Yes****	Yes****	Less than 50%	Yes	No	Short/Med.	Yes****	No
<b>Dunkin' Donuts</b> (617) 965-8551 829 Washington Street	BU-1	CV	No	12	10	Coffee, donuts, sandwiches	None	Metered	Yes	No	Yes	Yes	More than 50%	Yes	No	Short	Yes	No
<b>Gold Star Rest.</b> (617) 244-0887 817 Washington Street	BU-1	Rest.	Yes	125	100+	Chinese & Polynesian	None	Metered	No***	Yes	Yes****	Yes****	More than 50%	Yes	Yes	Medium	Yes****	No
<b>Great Harvest</b> (617) 244-1572 814 Walnut Street	BU-1	CV	No	5	4 counter plus bench	Breads, soups, coffee and cold drinks	None	Metered	Yes	No	Yes	Yes	More than 50%	Yes	No	Short	Yes	No
<b>Karoun</b> (617) 964-3400 839 Washington Street	BU-1	Rest.	Yes	185	about 150	Middle Eastern	several shared spaces	Metered	No	Yes	No	-	Less than 50%	Yes	No	Short	No	No
<b>KFC/Taco Bell</b> (617) 227-2351 336 Walnut Street	BU-1	CV	No	25	29	Fried chicken, tacos, salads, cold drinks	several shared spaces	Metered	Yes	No	Yes	Yes	40% to 50%	Yes	No	Short	Yes	No
<b>Lam's Restaurant</b> (617) 630-5222 827 Washington Street	BU-1	Rest.	Yes	80	60+	Asian-Vietnamese	None	Metered	No***	Yes	Yes****	Yes****	Less than 50%	Yes	No	Medium	Yes****	No
<b>Newtonville Pizza</b> (617) 552-9512 322 Walnut Street	BU-1	CV	No	12	12	Pizza, subs, salads	None	Metered	Yes	No	Yes	Yes	More than 50%	Yes	No	Short	Yes	No
<b>New Hong Kong</b> (617) 527-1100 10 Austin Street	BU-1	CV	No	0	(bench)	Take-out Chinese	None	Metered	Yes	No	Yes	Yes	All	Yes	Yes	Medium	Yes	No
<b>Starbucks</b> (617) 965-0907 10 Austin Street	BU-1	CV	No	12	26	Coffee drinks, pastries, salads, sandwiches	None	Metered	Yes	No	Yes	Yes	More than 50%	No	No	Short	Yes	No
<b>Taste in Newtonville</b> (617) 332-6886 311 Walnut Street	BU-1	CV	Yes	14	16	Prepared foods, coffee drinks, sandwiches, pastries, ice cream	several shared spaces	Metered	Yes	No	Yes	Yes	Less than 50%	Yes	No	Short	No	No

\*Counter service means that patrons order, pay for, and receive food at counter.

\*\*Cabot's is primarily restaurant with walk-up counter for ice cream and take-out.

\*\*\*Gold Star and Lam's are primarily restaurants with some take-out.

\*\*\*\*For Cabot's, Gold Star and Lam's, these responses apply to take-out component of business. For restaurant component of business, all have wait staff and patrons pay after eating.

<sup>a</sup> Includes external walk-up or drive-through service